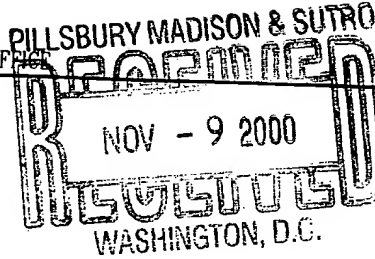




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In re Application of
Hee-Chun Lee
Application No. 08/825,582
Filed: March 31, 1997
Attorney Docket No. 224944/P3334

DECISION GRANTING PETITION

This is a decision in response to the "Request for Withdrawal of Notice of Termination..." filed August 5, 1999, which is being treated as a petition requesting that the above-identified application be treated as a proper continuation application under 37 CFR 1.62¹ and accorded a filing date of March 31, 1997. The petition was recently referred to the Office of Petitions for consideration. Any inconvenience caused applicant is regretted.

On June 23, 1997, Initial Patent Examination Division mailed a Notice of Improper FWC Filing stating that the application papers deposited March 31, 1997, were not in compliance with 37 CFR 1.62 since the prior application was abandoned, or proceedings terminated on March 1, 1997. Thereafter, on June 9, 1998, the filing fee of \$770, less a \$130 handling fee, was refunded to counsel's deposit account. On June 28, 1999, a Notice of Termination was mailed.

In response, on August 5, 1999, the present petition was filed wherein petitioner argues that both notices were mailed in error. Petitioner explains that a timely response to the Notice of Improper Filing was filed and that copendency was properly maintained between the two applications in view of a further petition for extension of time filed in the prior application on March 31, 1997. Petitioner submits, *inter alia*, a copy of the response filed July 11, 1997, as well as a copy of the post card receipt therefor. Petitioner requests that the application be accorded a filing date under 37 CFR 1.62 and that the petition fee be refunded.

The original response filed July 11, 1997, cannot be located. However, PTO records confirm that a petition fee was paid on July 11, 1997. Accordingly, it is conceded that the petition was timely filed on July 11, 1997, and subsequently, misplaced in the Office. It is also acknowledged that in view of the petition for extension of time filed within the third month on March 31, 1997, the prior application would not have become abandoned until after midnight, March 31, 1997 (March 30, 1997 was a Sunday). Therefore, copendency did exist between Application Nos. 08/691,822 and 08/825,582 on March 31, 1997, the date of deposit of Application No. 08/825,582.

The petition is granted. The notices mailed June 20, 1997, and June 28, 1999, respectively, are hereby vacated.

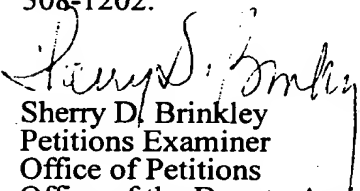
¹37 CFR §1.62 and §1.60 were deleted from title 37 of the Code of Federal Regulation effective December 1, 1997. See Notice of Final Rule, 62 Fed. Reg. 53132 (October 10, 1997).

The 130.00 petition fee paid on July 11, 1997 is being credited to counsel's deposit account. The previously refunded filing fee of \$640 is being charged to counsel's deposit account. The \$130 handling fee will be reapplied towards payment of the filing fee, for a total filing fee of \$770 received on filing.

The application is being returned to Initial Patent Examination Division for correction of PTO records and the file label to show that this is continuation application under 37 CFR 1.62 of prior Application No. 08/691,822, with a filing date of March 31, 1997.

Thereafter, the application will be forwarded to the Technology Center for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects